IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.4164 of 2006

to

FIRST APPEAL No.4173 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GENERAL MANAGER & 1 - Appellant(s)
Versus
RABARI JAMABHAI SENDHABHAI - Defendant(s)

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Appearance:
MS KRINA P. CALLA, AGP, for Appellants (IN FA:4164/06 to 4168/06
MS TANUJA KACHCHHI, AGP, for Appellants (IN FA:4169/06 to 4173/06
MR ASHOK V PRAJAPATI, for Respondent(s)-Claimant(s)(IN ALL FIRST APPEALS)

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 13/11/2006

ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr.Ashok V.Prajapati, learned counsel, waives service of notice on behalf of the claimant/ claimants in each Appeal. Having regard to the facts of the case, all these Appeals are taken up for final disposal today.

2. By filing these Appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short), read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged the legality of common judgment and award dated July 1, 2005, rendered by the learned Joint District Judge, 3rd Fast Track Court, Patan, in Land Acquisition Reference Case No.13/2004 to 22/2004, by which, the

claimants are awarded additional amount of compensation at the rate of Rs.45/- per sq.mt. over and above the amount of compensation awarded to them by the Special Land Acquisition Officer vide award dated November 21, 2003, at the rate of Rs.4.50 ps. per sq.mt., for their acquired lands.

3. A proposal was received by the State Government to acquire the lands of village Vansa, Taluka: Harij, District: Patan, for the public purpose of construction of Narmada canal. On scrutiny of the said proposal, the State Government was satisfied that the lands of village Vansa were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued, which was published in the official gazette on April 5, 2002. The land owners were served with

notices who had opposed the proposed acquisition. After considering their objections, a report was submitted by the Special Land Acquisition Officer to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of village Vansa which were specified in the Notification published under Section 4 of the Act were needed for the public purpose of construction of Narmada canal. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on June 29, 2002. The interested persons were thereafter served with notices under Section 9 of the Act for determination of amount of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed

compensation at the rate of Rs.200/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated November 21, 2003, offered compensation to the claimants at the rate of Rs.4.50 ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was highly inadequate. Therefore, they filed applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer the matters to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Patan, where they were numbered as referred to above.

4. On behalf of the claimants, witness Mr.Ramsinh Sumersinh Darbar was

examined at Ex.19. Over and above stating that the lands acquired were highly fertile and that each claimant was earning the net income of Rs.45,000/- to Rs.55,000/- per Vigha per year from the sale of agricultural produces, the witness produced previous award of the Reference Court relating to the lands of village Modhera at Ex.17 in support of the claim of the claimants for enhanced compensation. The witness also produced the previous award of the Reference Court relating to the lands of village Chandroda at Ex.18 in support of the claim for enhanced compensation. Further, the witness produced the sale-deeds relating to the lands of village Harij vide Ex.36 to 38 to support the claim for enhanced compensation.

5. On behalf of the appellants, witness

Mr.Bhaleshkumar Alkhabhai Asari, who was the Land Acquisition Officer, was examined at Ex.23 whereas Mr.Yogendrakumar Jawaharlal Gupta, who was the Deputy Executive Engineer, was examined at Ex.31. Mr.Yogendrakumar Jawaharlal Gupta produced the previous award of the Reference Court relating to the lands of village Roda for the purpose of consideration of the Court.

6. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous awards as well as the sale-deeds produced by the parties were relevant for the purpose of determining the market value of the lands acquired in the instant case from village Vansa. On the basis of documents produced by th parties, the Reference Court has awarded additional amount of compensation to the claimants at the

rate of Rs.45/- per sq.mt. by the impugned award giving rise to the above numbered Appeals.

7. This Court has heard Ms.Krina P.Calla with Ms.Tanuja Kachchhi, learned Assistant Government Pleaders, for the appellants as well as Mr.Ashok V.Prajapati, learned counsel appearing for the claimant/ claimants in each Appeal, at great length and in detail. This Court has also considered the documentary evidence as well as oral evidence adduced by the parties before the Reference Court.

8. From the record of the case, it is evident that the claimants had relied upon the previous awards of the Reference Court relating to the lands of village Modhera and village Chandroda, which were produced at Exs.17 and 18 respectively. The

testimony of witness Mr.Ramsinh Sumersinh Darbar recorded at Ex.19 would indicate that no reliable and satisfactory evidence could be adduced to establish that the lands of village Modhera and lands of village Chandroda, which were acquired earlier, were similar in all respects to the lands acquired in the instant case. Further, the testimony of witness Mr.Yogendrakumar Jawaharlal Gupta, examined on behalf of the appellants, would indicate that the lands which were previously acquired from village Modhera were situated at a distance of about 40 kms. away from the lands acquired from village Vansa whereas the lands of village Chandroda which were previously acquired by the Government were situated at a distance of about 20 kms. away from the lands acquired from village Vansa. In view of great distance at which the lands

acquired in the instant case were situated from the lands of village Modhera and village Chandroda, this Court is of the opinion that the previous awards relating to the lands of village Modhera and village Chandroda could not have been made basis for the purpose of determining the market value of the lands acquired in the instant case.

9. Further, the cross examination of the witness for the claimants would indicate that agricultural operations were dependent upon rainy waters and rainy season was completely irregular. The record further shows that the lands acquired from village Vansa were situated near desert of Kutchh and therefore, the claim made by witness Mr.Ramsinh Sumersinh Darbar, that the lands acquired were highly fertile and that each claimant was earning

Rs.45,000/- to Rs.55,000/- per Vigha per year from the sale of agricultural produces, becomes highly doubtful.

10. As the lands acquired from village Vansa were not comparable to the lands which were previously acquired from village Modhera and village Chandroda, this Court is of the opinion that the Reference Court was not justified in placing reliance on those awards for the purpose of determining the market value of the lands acquired from village Vansa. Similarly, the sale-deeds produced by the witness for the claimants relating to the lands of village Harij could not have been taken into consideration for the purpose of determining the market value of the lands acquired from village Vansa for the simple reason that they were relating to non-agricultural lands whereas in the

instant case, agricultural lands were acquired. Further, those sale-deeds related to small areas of land compared to the vast area acquired in the instant case. Therefore, this Court is of the firm opinion that the Reference Court was also not justified in placing reliance on the sale-deeds relating to the lands of village Harij for the purpose of determining the market value of the lands acquired from village Vansa.

11. Once, the two previous awards relied upon by the claimants and the sale-deeds relating to the lands of village Harij are taken out of consideration, the Court is left with the previous award of village Roda for the purpose of determining the market value of the lands acquired in the instant case. It may be mentioned that the previous award of the Reference Court relating

to the lands of village Roda is relied upon by the appellants themselves and it is the case of the appellants that the market value of the lands acquired in the instant case should be determined on the basis of said previous award. Therefore, the said previous award will have to be taken into consideration for the purpose of determining the market value of the lands acquired in the instant case.

12. The previous award of the Reference Court relating to the lands of village Roda is produced at Ex.32. It indicates that the lands of village Roda, Taluka: Harij, District: Mehsana, were acquired for public purpose of Dharoi Canal Project pursuant to publication of Notification issued under Section 4(1) of the Act in the official gazette on January 4, 1993. Therein, the Special

Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs.1.95 ps. per sq.mt. though the claim of the claimants was for Rs.30/- per sq.mt. Therefore, the claimants had sought References. Accordingly, References were made to the District Court, Mehsana, where they were registered as Land Acquisition Reference Nos.2586/1996 to 2602/1996. The Reference Court, by judgment and award dated August 27, 2001, awarded additional amount of compensation to the claimants at the rate of Rs.16/- per sq.mt. During the course of hearing of the Appeals, Ms.Krina P.Calla, learned Assistant Government Pleader, has produced xerox copy of judgment of the High Court dated April 1, 2005, delivered by the Division Bench in First Appeals No.3216/2004 to 3226/2004 with First Appeals No.845/2005 to 850/2005, for

perusal of the Court. It indicates that the award of the Reference Court rendered in Land Acquisition Reference Nos.2586/1996 to 2602/1996 was challenged by the Special Land Acquisition Officer before the High Court and the High Court, by its judgement dated April 1, 2005, reduced the amount of compensation payable to the claimants of village Roda to Rs.12/- in all. Thus, on the basis of the previous award of the Reference Court, as modified by the High Court, relating to the lands of village Roda, this Court is of the opinion that the claimants in the instant case would be entitled to compensation at the rate of Rs.12/- per sq.mt.

13. The record further shows that Notification under Section 4(1) of the Act for acquiring the lands of village Roda was published in the official

gazette on January 4, 1993, whereas in the instant case, Notification for acquiring the lands of village Vansa was published in the official gazette on April 5, 2002. Thus, there is no manner of doubt that there was a gap of about ten years between publication of Notifications issued under Section 4(1) of the Act for acquiring the lands from the two villages. The Supreme Court has laid down in catena of reported decisions that if there is time gap between publication of Notifications issued under Section 4(1) of the Act, the claimant would be entitled to reasonable rise in price of lands at the rate of 10% p.a. If rise in price at the rate of 10% p.a. is granted to the claimants in the instant case, this Court is of the opinion that the claimants would be entitled to compensation at the rate of Rs.24/- per sq.mt. in all. The

above discussion would indicate that the claimants are entitled to compensation at the rate of Rs.24/- per sq.mt. in all and not at the rate of Rs.49.50 ps. per sq.mt. as held by the Reference Court. The Appeals filed by the State Government will have to be accordingly allowed.

14. For the foregoing reasons, the Appeals partly succeed. The common judgment and award dated July 1, 2005, rendered by the learned Joint District Judge, 3rd Fast Track Court, Patan, in Land Acquisition Reference Case No.13/2004 to 22/2004, awarding compensation to the claimants at the rate of Rs.49.50 per sq.mt. in all is hereby modified and it is held that the claimants would be entitled to compensation in all at the rate of Rs.24/- per sq.mt. for their acquired lands. The other benefits granted by the impugned award

are not interfered with at all and are hereby confirmed. The Appeals are accordingly partly allowed. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this Judgment as expeditiously as possible.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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